



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2009] IASC 126
Renewal of: [2004] IASC 119
The Route: South Africa
The Applicant: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/200930

1 The application for renewal

1.1 On 11 October 2004, the delegate of the Commission issued Determination [2004] IASC 119 (the Determination), allocating to Qantas one frequency per week of capacity in each direction on the South Africa route. The Determination is varied by Decision [2008] IASC 225 to permit code sharing with South African Airways.

1.2 Under the *International Air Services Commission Act 1992* (the Act) the Commission must start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. The Determination expires on 27 July 2010.

1.3 Qantas applied to the Commission on 11 September 2009 for a renewal of the Determination. The Commission published a notice on 12 October 2009 inviting other applications for an allocation of the capacity subject to renewal. No other applications were received.

1.4 All material supplied by the applicant is filed on the Register of Public Documents.

2 Commission's consideration

2.1 Under the Minister's Policy Statement (No. 5) of 19 May 2004, there is a rebuttable presumption in favour of the carrier seeking the renewal.

2.2 The Commission notes that:

- Qantas has been fully utilising the relevant capacity;
- according to the Register of Available Capacity, for passenger services to/from Johannesburg, Capetown and/or Durban, there are two services per week with any aircraft type available from October 2009 and nine services per week with any aircraft type available from October 2010;

- there are no other applicants seeking capacity on the route; and
- there is no evidence that Qantas has failed to service the route effectively;

2.3 In these circumstances, the Commission concludes that the renewal of Determination [2004] IASC 119 would be of benefit to the public.

2.4 The wording of the fresh determination below reflects the view of the Commission that determinations which renew original determinations should contain updated terms and conditions consistent with the Commission's current practice and current air services arrangements. Under the Act, the Commission may make changes to the terms and conditions included in the original determination where warranted by changes in circumstances since the original determination was made.

3 Determination for renewal of Determination [2004] IASC 119 allocating capacity on the South Africa route to Qantas ([2009] IASC 126)

3.1 The Commission makes a determination in favour of Qantas, allocating one frequency per week in each direction for passenger services between Australia and Johannesburg, Capetown and/or Durban under the Australia – South Africa air services arrangements.

3.2 The determination is for five years from 28 July 2010.

3.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity;
- only Qantas is permitted to utilise the capacity;
- Qantas is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the prior approval of the Commission;
- SAA is permitted to code share on Qantas flights operated to and from South Africa until 31 December 2010, consistent with the Qantas/SAA code share and commercial agreements provided to the Commission, subject to the following conditions:
 - any amendments to the code share agreement (including to Annex 1), or to the commercial agreements in so far as it affects the former, must be approved by the Commission;
 - any new code share agreement or commercial agreement in so far as it affects the former must be approved by the Commission;
 - Qantas and SAA must price and sell their services on the route independently;

- Qantas and SAA must withdraw from all IATA tariff coordination activities in relation to air fare levels between Australia and South Africa;
 - Qantas must not share or pool revenues under any such agreement;
 - Qantas must take all reasonable steps to ensure that all passengers are informed, at the time of ticket reservation, of the carrier actually operating the flight; and
 - the approval will remain in effect only while Qantas and SAA together operate at least ten return services per week on the South Africa route. Temporary reductions from this level may be permitted in exceptional circumstances, but only with the prior approval of the Commission;
 - Qantas must submit to the Commission reports each quarter on the number of code share seats available for sale and sold by it on each of SAA's operated services and by SAA on each of Qantas' operated services; and its quarterly yields per revenue passenger kilometre for all passenger classes on these services.
- changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia - South Africa air services arrangements being withdrawn; or
 - has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of Qantas or be in a position to exercise effective control of Qantas, without the prior consent of the Commission, and
 - changes in relation to the management, status or location of operations and Head Office of Qantas are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia - South Africa air services arrangements.

Dated: 20 October 2009

John Martin
Chairman

Philippa Stone
Member

Ian Smith
Member